

UNITED STATES DISTRICT COURT
DISTRICT OF NEVADA

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LAUSTEVEION JOHNSON,

Case No. 3:13-cv-00689-MMD-VPC

Plaintiff,

v.

ORDER

APRIL WITTER, *et al.*,

Defendants.

I. DISCUSSION

On February 25, 2014, this Court issued a screening order and permitted Plaintiff's First Amendment retaliation claim (Count I), Eighth Amendment deliberate indifference to medical needs claim (Count II), and Fourteenth Amendment due process claim (Count III) to proceed. (Dkt. no. 4 at 5-7, 9.) In his complaint, Plaintiff alleged that prison officials had taken away and refused to return his hypertension medication twice even though Plaintiff had informed prison officials that the medication helped to prevent him from having heart attacks. (*Id.* at 4.) As a result of the confiscations, Plaintiff suffered two heart attacks. (*Id.* at 4-5.) This case is currently in a ninety (90) day stay. (*Id.* at 9.)

On March 3, 2014, Plaintiff filed a motion for preliminary injunction. (Dkt. no. 6 at 1.) In the motion, Plaintiff alleged that prison officials had confiscated his hypertension medication a third time in January of 2014. (*Id.*) Plaintiff did not have a third heart attack but asserts that this incident has "brought back fears and has confirmed that [Ely State Prison ("ESP")] officials are trying to kill Plaintiff by causing him to have a heart attack."

1 (*Id.*) Plaintiff seeks injunctive relief in the form of a prison transfer. (*Id.* at 2.) Plaintiff
2 seeks an order from this Court ordering Defendants to transfer Plaintiff to Northern
3 Nevada Correctional Center or any other prison besides ESP. (*Id.*)

4 Injunctive relief, whether temporary or permanent, is an “extraordinary remedy,
5 never awarded as of right.” *Winter v. Natural Res. Defense Council*, 555 U.S. 7, 24
6 (2008). “A plaintiff seeking a preliminary injunction must establish that he is likely to
7 succeed on the merits, that he is likely to suffer irreparable harm in the absence of
8 preliminary relief, that the balance of equities tips in his favor, and that an injunction is in
9 the public interest.” *Am. Trucking Ass’ns, Inc. v. City of Los Angeles*, 559 F.3d 1046,
10 1052 (9th Cir. 2009) (*quoting Winter*, 555 U.S. at 20). Furthermore, under the Prison
11 Litigation Reform Act (“PLRA”), preliminary injunctive relief must be “narrowly drawn,”
12 must “extend no further than necessary to correct the harm,” and must be “the least
13 intrusive means necessary to correct the harm.” 18 U.S.C. § 3626(a)(2).

14 As an initial matter, the Court recognizes that Plaintiff’s request for a prison
15 transfer is not the least intrusive means necessary to correct the harm. Nevertheless,
16 the Court finds that, based on the facts alleged in the present motion, Plaintiff arguably
17 states a colorable claim for Eighth Amendment deliberate indifference to medical needs.
18 *See Jett v. Penner*, 439 F.3d 1091, 1096 (9th Cir. 2006) (holding that to satisfy the
19 deliberate indifference prong, a plaintiff must show “(a) a purposeful act or failure to
20 respond to a prisoner’s pain or possible medical need and (b) harm caused by the
21 indifference”). Based on the allegations, Plaintiff could suffer irreparable harm by having
22 another heart attack in the absence of his hypertension medication. As such, the Court
23 orders the Attorney General’s Office to advise the Court within seven (7) days of the
24 date of the entry of this order whether it will enter a general notice of appearance on
25 behalf of Defendants. Additionally, based on the nature of the allegations, Defendants
26 shall also have seven (7) days from the date of this order to file their response to
27 Plaintiff’s motion for preliminary injunction. The Court specifically directs Defendants to
28 address the confiscation of Plaintiff’s hypertension medication.

